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Filing date: **08/13/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92061796
Party	Plaintiff Spansion LLC
Correspondence Address	BELINDA J SCRIMENTI PATTISHALL MCAULIFFE NEWBURY ET AL LLP 200 S WACKER DR, STE 2900 CHICAGO, IL 60606 UNITED STATES bscrimenti@pattishall.com, and@pattishall.com, pab@pattishall.com, kep@pattishall.com, sm@pattishall.com
Submission	Motion to Amend Pleading/Amended Pleading
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Signature	/Belinda J. Scrimenti/
Date	08/13/2015
Attachments	Spansion v. Kingston Petition for Partial Cancellation No 92061796 824075_1.pdf(34621 bytes) Spansion v. Kingston Petition for Partial Cancellation Exhibits No 92061796 824075_1.pdf(3380003 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

US Trademark Registration No. 4,721,431 for HYPERX SKYN
Registered: November 22, 2014

Spansion LLC,)	
)	
Petitioner,)	
)	
v.)	Cancellation No. 92061796
)	
Kingston Technology Corporation)	
)	
Registrant)	
_____)	

PETITION FOR PARTIAL CANCELLATION/LIMITATION

Pursuant to the Trademark Trial and Appeal Board's Order dated July 24, 2015 in a related proceeding between the same parties (Opposition No. 91218100), Petitioner, Spansion LLC ("Spansion") herein files its First Amended Petition for Partial Cancellation/Limitation. In light of the fact that Registrant, Kingston Technology Corporation ("Kingston") has not yet filed an Answer or other response, no motion or further leave is required for amendment. *See* TBMP § 507.02.

Spansion, a Delaware limited liability company located and doing business at 198 Champion Court, San Jose, CA 95134-1709 (formerly located at 915 DeGuigne Drive, Sunnyvale, California 94085), believes it is damaged and will continue to be damaged by Registration No. 4,721,431 for the mark HYPERX SKYN owned by Kingston, and hereby petitions to cancel and/or seeks to modify such registration as set forth herein.

The grounds for the petition are as follows:

1. Spansion is one of the leading manufacturers of computer memory products and embedded systems solutions, including a broad portfolio of flash memory, microcontrollers,

mixed-signal and analog products, and system-on-chip solutions. Such products have a wide variety of applications, including in connection with consumer electronics, industrial and automotive applications.

2. Spansion has applied to register the mark HYPERRAM in connection with “volatile memory devices, namely, random-access memory semiconductor chips; applications and utility software for functions associated with random-access volatile memory devices, namely, code and data management software and random-access memory semiconductor chip drivers,” (App. Serial No. 86/189,104).

3. Spansion's HYPERRAM application was published on July 1, 2014.

4. On August 28, 2014, Kingston filed its initial Notice of Opposition against Spansion's HYPERRAM application. *See* Opposition No. 91218100. Kingston filed an Amended Notice of Opposition on September 23, 2014. (A copy of which is attached as Exhibit A).

5. In its Amended Notice of Opposition, Kingston alleges that Spansion's HYPERRAM mark is merely descriptive or generic. In support of this claim, Kingston alleges: “The term 'hyper' is a Greek word meaning 'above' or 'more than.' It is used as a prefix to technical concepts and products to convey a more advanced or more automatic capability. Further, 'hyper' is a highly used laudatory term or prefix in the electronics and computer industry and is the subject of many U.S. Trademark Registrations in conjunction with other terms and designs in International Class 009.” *See* Exhibit A, Kingston's Amended Notice of Opposition, at ¶¶ 8 and 12.

6. Based on Kingston's own arguments as to the descriptive nature of the term "HYPER," in its Answer, Spansion counterclaimed seeking cancellation or limitation as to several of the HYPERX registrations asserted by Kingston in that proceeding. *See* Opposition No. 91218100, Spansion's Answer and Counterclaims to Amended Notice of Opposition, filed February 12, 2015 (attached hereto as Exhibit B). Pursuant to the Board's Order dated July 24, 2015 in that proceeding, Spansion will be filing its First Amended Counterclaims by the August 25, 2015 deadline.

7. Notwithstanding its statements in its Amended Notice of Opposition asserting the descriptive nature of the term "HYPER" for electronics and computer industry products, Kingston has embarked upon a pattern of seeking to register, without a claim of acquired distinctiveness, a family of "HYPERX" marks for a variety of electronic and computer goods. Included in this pattern is Kingston's recent registration of the mark HYPERX SKYN for "Computer accessories, namely, mouse pads for use with electronic and online gaming," in Class 9 (Reg. No. 4,721,431).

8. By virtue of its own allegations and logic, Kingston has conceded that the "HYPER" prefix in Kingston's HYPERX SKYN mark describes Kingston's electronic and computer products, including its mouse pads, as being better or "more advanced" than other such products. Kingston has also conceded that the "HYPER" element is merely laudatory.

9. The character "X" in Kingston's HYPERX SKYN mark is also descriptive and non-distinctive. The character "X" is used in the computer and electronics industries to refer to a product's speed (from the term "X-speed" rating). For products used in connection with computer gaming, the character "X" is also used as shorthand for "extreme" gaming capability.

10. Thus, as used by Kingston, the “X” element of Kingston's HYPERX SKYN mark describes mouse pads that offer increased speed and signifies that Kingston's HYPERX SKYN products have functions and features optimized for the high-speed needs of the targeted “extreme” computer gaming industry.

11. Given these descriptive connotations, the composite element of Kingston’s HYPERX SKYN mark – HYPERX – is, when taken as a whole, merely descriptive when used in connection with computer and electronic products in the nature of “mouse pads for use with electronic and online gaming,” as the composite element merely describes an “advanced” product that offers increased precision and accuracy, and which allows for very fast use for “extreme” computer gaming applications.

12. Indeed, statements made by Kingston in press releases and on its website confirm that Kingston's HYPERX SKYN mouse pads are targeted to “gamers, overclockers and enthusiasts.” *See, e.g.,* Exhibit C.

13. According to Kingston, its HYPERX SKYN mouse pads come with two different surface options – a “control surface for increased gaming accuracy” and a “speed surface for fast-moving action.” These mouse pads also offer a “[p]aper-thin gaming-grade hard surface for a seamless transition between desktop and mouse pad.” *See, e.g.,* Exhibit D.

14. Third parties describing or reviewing Kingston's HYPERX products have also noted that Kingston's “HYPERX logo is reserved for [Kingston's] fastest products,” and that such products are targeted at “the gaming and high performance market.” *See, e.g.,* Exhibit E.

15. Kingston's public statements about its HYPERX SKYN mouse pads demonstrate that the composite element HYPERX is used to describe the fact that Kingston's computer and

electronic products covered by Registration No. 4,721,431 are “advanced” in offering increased speed, high levels of accuracy and precision, and are designed for use by “extreme” gamers.

16. The parties' assertions, claims, and counterclaims in Opposition No. 91218100 are directly related to the claims in the instant cancellation proceeding. Spansion is damaged by Kingston's attempts to develop a family of “HYPERX” marks in the electronics and computer industries, while simultaneously taking inconsistent positions as to the descriptiveness of the “HYPER” element in the marks at issue in pending Opposition No. 912818100 and the “HYPERX” element of the registration which is the subject of the instant proceeding.

**Count I: Request for Disclaimer of “HYPERX” in Reg. No. 4,721,431
on the Ground that “HYPERX” is Merely Descriptive**

17. Spansion repeats and re-alleges the allegations of Paragraph 1 through 16 as though fully set forth herein.

18. Kingston claims in its Amended Notice of Opposition against Spansion's HYPERRAM mark that the term “HYPER” is laudatory and descriptive of electronics and computer products. Kingston alleges that: “The term 'hyper' is a Greek word meaning 'above' or 'more than.' It is used as a prefix to technical concepts and products to convey a more advanced or more automatic capability. Further, 'hyper' is a highly used laudatory term or prefix in the electronics and computer industry ...” See Exhibit A, Kingston's Amended Notice of Opposition, at ¶¶ 8 and 12.

19. By its logic and allegations, Kingston has conceded that the “HYPER” element of its HYPERX SKYN mark is merely laudatory and descriptive of the electronics and computer products set forth in Reg. No. 4,721,431, namely “mouse pads for use with electronic and online gaming,” in that the term describes them as having an advanced capability that is superior to that of competing goods.

20. Further, the letter “X” element of Kingston's HYPERX SKYN mark is non-distinctive and descriptive, as it is intended to convey that Kingston's HYPERX SKYN mouse pads offer increased speed and have functions and features intended for use by “extreme” gamers.

21. By Kingston's own logic and public pronouncements, then, the composite term HYPERX element of the mark HYPERX SKYN, taken as a whole, is merely descriptive of its mouse pads, as being purportedly “advanced” products that offer precision and accuracy and that provide fast performance for users in the “extreme” gaming industry.

22. As set forth in its Answer in Opposition No. 91218100, Spansion denies that the prefix “HYPER” is a merely descriptive term as applied to electronic and computer goods or that its mark HYPERRAM is descriptive. However, to the extent that the Trademark Trial and Appeal Board finds otherwise, Kingston's use of the prefix “HYPER” in conjunction with the non-distinctive character “X” to form the composite mark HYPERX for computer and electronics products, namely “mouse pads for use with electronic and online gaming,” is likewise merely descriptive, as it simply constitutes a combination of the same prefix “HYPER” and the highly descriptive term “X,” collectively used to connote high-speed and extreme gaming functionality.

WHEREFORE, Spansion respectfully requests that, if Opposition No. 91218100 is sustained, Kingston's Registration No. 4,721,431 likewise be restricted and modified to include a

disclaimer of the term “HYPERX” on the basis of descriptiveness, pursuant to Section 18 of the Lanham Act, 15 U.S.C. § 1068.

Respectfully submitted,

PATTISHALL, McAULIFFE, NEWBURY,
HILLIARD & GERALDSON LLP

Date: August 13, 2015

By: /Belinda J. Scrimenti/

Belinda J. Scrimenti

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Attorneys for Petitioner, Spansion LLC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition for Partial Cancellation/Limitation
has been served upon the attorney of record for applicant:

Christine Yang
Law Offices Of S.J. Christine Yang
17220 Newhope St. Ste 101-102
Fountain Valley, California 92708-4272

by United States mail, postage prepaid, this 13th day of August 2015.

/Belinda J. Scrimenti/
Belinda J. Scrimenti

EXHIBIT A

ESTTA Tracking number: **ESTTA628686**

Filing date: **09/23/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91218100
Party	Plaintiff Kingston Technology Corporation
Correspondence Address	John D. McConaghy Novak Druce Connolly Bove + Quigg LLP North Tower Suite 2300333 South Grand Avenue Los Angeles, CA 90071-1504 UNITED STATES jmccconaghy@novakdruce.com, trademarks@novakdruce.com, cy-ang@sjclawpc.com
Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	John D. McConaghy
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Signature	/John D. McConaghy/
Date	09/23/2014
Attachments	Kingston4amdopp.pdf(170294 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

KINGSTON TECHNOLOGY CORPORATION,)	Opposition No. 91218100
A California corporation,)	
)	
Opposer.)	
vs.)	
)	
SPANSION LLC,)	
A Limited Liability Company,)	
)	
Applicant.)	

AMENDED NOTICE OF OPPOSITION

In the matter of an application to register a trademark, Serial No. 86/189,104, filed February 10, 2014, for the mark HYPERRAM, in the name of Spansion LLC (hereinafter "Applicant"), published for opposition in the Trademark Official Gazette of July 1, 2014 at page TM 568, Opposer, Kingston Technology Corporation, believes it will be damaged by issuance of the applied for registration of the mark HYPERRAM, and hereby opposes same. The Applicant having not yet answered, Opposer presents this Amended Notice of Opposition without leave of the Trademark Trial and Appeal Board.

The grounds for opposition are as follows:

COUNT I – MERELY DESCRIPTIVE

1. Opposer, Kingston Technology Corporation, is a corporation duly organized and existing under the laws of the State of California and has a place of business at 17600 Newhope Street, Fountain Valley, California 92708. Opposer markets, distributes and sells memory devices including random access memory (RAM), memory modules, solid state drives for data storage devices and flash drives.

2. Commencing prior to the filing date of the opposed application, Opposer has, and is now, engaged in the distribution and sale in commerce in the United States of the products listed under and in connection with the U.S. registered trademarks HYPERX and HYPERX BEAST (collectively, Opposer's "HYPERX marks"). Opposer continually has used the HYPERX marks in commerce in connection with Opposer's products produced, advertised, offered for sale and sold by Opposer to identify, designate and distinguish these products from the products of others.

3. Opposer is the owner of the following U.S. Trademark Registrations for its HYPERX marks:

<u>U.S. Reg. No.</u>	<u>Issue Date</u>
Reg. No. 2,848,874	June 1, 2004
Reg. No. 4,162,334	June 19, 2012
Reg. No. 4,316,905	April 9, 2013
Reg. No. 4,452,249	December 17, 2013

Said registrations are valid, subsisting and constitute *prima facie* and/or conclusive evidence of Opposer's ownership and exclusive right to use the HYPERX marks in commerce in connection with the goods set forth in these Registrations.

4. Since Opposer's initial use of the HYPERX marks, Opposer has used, advertised, produced, offered and sold in commerce its goods under and in connection with the HYPERX marks to the public directly by way of the internet, through Internet retailers, distributors and brick and mortar retail outlets with the result that Opposer's customers and the public in general have come to know and recognize and associate the HYPERX marks with Opposer and/or with the goods produced, advertised, marketed, distributed and sold directly or indirectly by Opposer. Opposer has thus built up goodwill in connection with the sale of its products under Opposer's HYPERX marks.

5. On February 10, 2014, Applicant filed the opposed Application to register the mark HYPERRAM. The opposed Application was accorded Serial No. 86/189,104, and was published for opposition in the Official Gazette on July 1, 2014 at page TM 568 for the following goods in International Class 009:

Volatile memory devices, namely, random-access memory semiconductor chips; applications and utility software for functions associated with random-access volatile memory devices, namely, code and data management software and random-access memory semiconductor chip drives.

6. The HYPERRAM mark sought to be registered by Applicant is descriptive of memory devices and Opposer and has an equal right to use the term descriptively.

7. The term HYPERRAM, whether one word or two, is used in the electronics and computer industry to describe random-access memories which are active or of significant capabilities.

8. The Applicant is not exclusive in the use of "hyper" with "ram" to describe random access memory. The term "hyper" is a Greek work meaning "above" or "more than." It is used as a prefix to technical concepts and products to convey a more advanced or more automatic capability. Further, "hyper" is a highly used laudatory term or prefix in the electronics and computer industry and is the subject of many U.S. Trademark Registrations in conjunction with other terms and designs in International Class 009.

COUNT II – MERELY GENERIC

9. Opposer restates and realleges Paragraphs 1 through 5, inclusive, above, of this Notice of Opposition, and hereby incorporates same as if fully set forth herein.

10. The HYPERRAM mark sought to be registered by Applicant is generic of memory devices and Opposer, Kingston, has an equal right to use the term generically.

11. The term HYPERRAM, whether one word or two, is used in the electronics and computer industry to mean and identify random-access memories which are active or of significant capabilities.

12. The Applicant is not exclusive in the use of "hyper" with "ram" to describe random access memory. The term "hyper" is a Greek work meaning "above" or "more than." It is used as a prefix to technical concepts and products to

convey a more advanced or more automatic capability. Further, "hyper" is a highly used laudatory term or prefix in the electronics and computer industry and is the subject of many U.S. Trademark Registrations in conjunction with other terms and designs in International Class 009.

WHEREFORE, Opposer Kingston believes and alleges that it will be damaged by registration of the HYPERRAM mark of Application Serial No. 86/189,104, as aforesaid, and prays that:

- A. Judgment in the present opposition be entered in favor of Opposer on Counts I and II;
- B. The present Opposition is sustained; and
- C. Registration of Application Serial No. 86/189,104 be rejected and refused.

Respectfully submitted,

KINGSTON TECHNOLOGY CORPORATION

Date: September 23, 2014

By /John D. McConaghy/ (Electronic signature)

John D. McConaghy
Breton Bocchieri
Christine Yang

Attorneys for Opposer

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Law Offices of S.J. Christine Yang
17220 Newhope Street, Suite 101-102
Fountain Valley, CA. 92708

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of this paper is being served upon all parties to this proceeding at the address recorded in the following manner on the date this filing is submitted, SEPTEMBER 23, 2014.

By Mail to:

Belinda J. Scrimenti
Pattishall, Mcauliffe, Newbury, Hilliard & Geraldts
200 S Wacker Dr Ste 2900
Chicago, Illinois 60606-5896

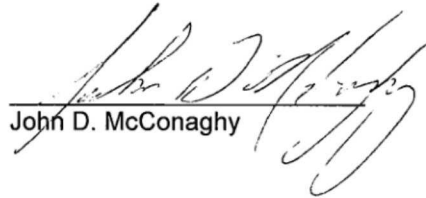

John D. McConaghy

EXHIBIT B

ESTTA Tracking number: **ESTTA655669**Filing date: **02/12/2015**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91218100
Party	Defendant Spansion LLC
Correspondence Address	BELINDA J SCRIMENTI PATTISHALL MCAULIFFE NEWBURY HILLIARD 200 S WACKER DR STE 2900 CHICAGO, IL 60606-5896 UNITED STATES arh@pattishall.com, bjs@pattishall.com, sm@pattishall.com
Submission	Answer and Counterclaim
Filer's Name	Belinda J. Scrimenti
Filer's e-mail	bscrimenti@pattishall.com, ahughes@pattishall.com, sm@pattishall.com, docket@pattishall.com
Signature	/Belinda J. Scrimenti/
Date	02/12/2015
Attachments	Answer and Counterclaims to Amended Notice of Opposition 021215.pdf(34319 bytes)

Registrations Subject to the filing

Registration No	4162334	Registration date	06/19/2012
Registrant	Kingston Technology Corporation 17600 Newhope Street Fountain Valley, CA 92708 UNITED STATES		

Goods/Services Subject to the filing

Class 009. First Use: 2011/07/28 First Use In Commerce: 2011/07/28
All goods and services in the class are requested, namely: Solid state drives for data storage devices

Registration No	4316905	Registration date	04/09/2013
Registrant	Kingston Technology Corporation 17600 Newhope Street Fountain Valley, CA 92708 UNITED STATES		

Goods/Services Subject to the filing

Class 009. First Use: 2008/01/07 First Use In Commerce: 2008/01/07
All goods and services in the class are requested, namely: Blank USB flash drives

Registration No	4452249	Registration date	12/17/2013
Registrant	Kingston Technology Corporation 17600 Newhope Street Fountain Valley, CA 92708 UNITED STATES		

Goods/Services Subject to the filing

Class 009. First Use: 2012/11/12 First Use In Commerce: 2012/11/12

All goods and services in the class are requested, namely: Dynamic random access memory (DRAM)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

US Trademark Application Serial No. 86/189,104 for HYPERRAM
Filed: February 10, 2014
Published: July 1, 2014

Kingston Technology Corporation,)	
)	
Opposer)	
)	
v.)	Opposition No. 91218100
)	
Spansion LLC)	
)	
Applicant)	
_____)	

ANSWER AND COUNTERCLAIMS TO AMENDED NOTICE OF OPPOSITION

ANSWER

Applicant, Spansion LLC ("Spansion"), hereby answers the Amended Notice of Opposition as follows in response to each numbered Paragraph thereof:

1. Applicant admits that online records of the California Secretary of State indicate that Opposer Kingston Technology Corporation is a California corporation with a place of business at 17600 Newhope Street, Fountain Valley, California 92708, but Applicant lacks knowledge or information sufficient to form a belief as to the truth of such allegations, and therefore denies them. Applicant further lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 1 and therefore denies them.
2. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 2 and therefore denies them.

3. Applicant admits that United States Patent and Trademark Office records indicate that Opposer owns the registrations alleged in Paragraph 3, with the listed registration dates. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 3 and therefore denies them. Applicant further avers that ownership of such registrations, even assuming, *arguendo*, their validity, does not confer upon Opposer exclusive rights to use of a mark with a prefix of the element HYPER for the identical or related goods.

4. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4 and therefore denies them.

5. Applicant admits the allegations of Paragraph 5.

6. Applicant denies the allegations of Paragraph 6.

7. Applicant denies the allegations of Paragraph 7.

8. Applicant denies that it "is not exclusive in the use of 'hyper' with 'ram' to describe random access memory." Applicant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 8 and therefore denies them. Applicant further avers that the existence of numerous other registrations on the United States Trademark Office Principal Register in Class 9 beginning with a prefix of "hyper" and including a second element of a generic, descriptive, or disclaimed term, including marks for goods highly related to those of Opposer and/or Applicant, reflects the Office's longstanding and accepted principle that such marks commonly are found not to be descriptive or generic.

9. Applicant restates its answers and averments to Paragraphs 1 through 5, as if fully set forth herein and incorporates them by reference in response to the allegations of Paragraph 9.

10. Applicant denies the allegations of Paragraph 10.

11. Applicant denies the allegations of Paragraph 11.

12. Applicant denies that it "is not exclusive in the use of 'hyper' with 'ram' to describe random access memory." Applicant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 12 and therefore denies them. Applicant further avers that the existence of numerous other registrations on the United States Trademark Office Principal Register in Class 9 beginning with a prefix of "hyper" and including a second element of a generic, descriptive, or disclaimed term, including marks for goods highly related to those of Opposer and/or Applicant, reflects the Office's longstanding and accepted principle that such marks commonly are found not to be descriptive or generic.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Opposer has failed to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Opposer's HYPERX mark consists merely of the term "hyper" with the non-distinctive or generic letter "x". Opposer has nonetheless asserted exclusive rights in the term HYPERX, as evidenced by its U.S. Trademark Registration Nos. 2,848,874; 4,162,334; 4,316,905. These registrations, none of which are based on acquired distinctiveness, constitute an assertion that the term "hyper" is not merely descriptive in the relevant industry identified by Opposer as "the electronics and computer industry." Opposer's claims are thus barred, in whole or in part, by the doctrine of estoppel.

THIRD AFFIRMATIVE DEFENSE

The existence of numerous other registrations on the United States Trademark Office Principal Register in Class 9 beginning with a prefix of “hyper” and including a second element of a generic, descriptive, or disclaimed term, including marks for goods highly related to those of Opposer and/or Applicant, reflects the Trademark Office’s and Board’s longstanding and accepted principle that composite marks incorporating such a combination of elements commonly are found to be not descriptive and not generic. Under the “reasoned decisionmaking doctrine,” no rational basis exists to justify the Board’s veering significantly from this vast prior precedent. Opposer has not alleged in its Amended Notice of Opposition, nor can it allege, any such rational basis for a diversion from such long-standing and voluminous precedent. Thus, Opposer’s claim fails under controlling law, and Applicant’s mark should be found not descriptive and not generic.

COUNTERCLAIMS

Spansion, a Delaware limited liability company located and doing business at 915 DeGuigne Drive, Sunnyvale, California 94085 (“Spansion”), believes it is damaged and will continue to be damaged by Registration Nos. 4,162,334 and 4,316,905 for the mark HYPERX and Registration No. 4,452,249 for the mark HYPERX BEAST owned by Opposer Kingston Technology Corporation, and hereby petitions to cancel or modify such marks as set forth herein. As grounds for its petition, Spansion alleges as follows:

**FIRST COUNTERCLAIM FOR CANCELLATION OF
REGISTRATION NOS. 4,162,334 AND 4,316,905 FOR THE MARK HYPERX**

1. Spansion applied to register the trademark HYPERRAM for "volatile memory devices, namely, random-access memory semiconductor chips; applications and utility software for functions associated with random-access volatile memory devices, namely, code and data management software and random-access memory semiconductor chip drivers." Application Serial No. 86/189,104.

2. Spansion's HYPERRAM application was published on July 1, 2014.

3. Opposer filed its first Notice of Opposition on August 28, 2014.

4. Opposer initially alleged as grounds for opposition in Count I "likelihood of confusion," in addition to descriptiveness and genericness.

5. Opposer subsequently amended its Notice of Opposition to withdraw its claim of likelihood of confusion when filing the Amended Notice of Opposition.

6. Opposer's Amended Notice of Opposition alleges in Paragraphs 8 and 12 that the prefix "hyper" is used "to convey a more advanced or automatic quality" and that it is a "highly laudatory term." Thus, Opposer alleges that the prefix "hyper" is merely descriptive of electronic and computer goods.

7. Notwithstanding its statements in its Notice, Opposer owns Trademark Registration No. 4,162,334 for the mark HYPERX for "solid state drives for data storage devices" in Class 9.

8. Additionally, Opposer owns Trademark Registration No. 4,316,905 for the mark HYPERX for "blank USB flash drives" in Class 9.

9. The character "x" in Opposer's registrations is non-distinctive and/or generic. As used by Opposer, the "x" element is a term that descriptively implies goods that feature an

“extra” quality and/or implies some other descriptive or generic feature, such as reflecting the roman numeral character for “10” to identify a 10th version of the product.

10. As set forth in its Answer, Spansion denies that the prefix "hyper" is a merely descriptive term as applied to electronic and computer goods or that its mark HYPERRAM is descriptive. However, to the extent that the Trademark Trial and Appeal Board finds otherwise, Opposer's use of the prefix "hyper" in conjunction with the non-distinctive character "x" for electronic and computer goods in the mark HYPERX is likewise merely descriptive, as it simply constitutes a combination of the same prefix “hyper” and the highly descriptive or generic term “x.”

WHEREFORE, Spansion respectfully requests that, if Opposer's opposition is sustained on the basis of descriptiveness or genericness, that Opposer's Registration Nos. 4,162,334 and 4,316,905 likewise be cancelled under Section 18 of the Lanham Act, 15 U.S.C. §1068, on the basis of descriptiveness.

**SECOND COUNTERCLAIM FOR RESTRICTION OF
REGISTRATION NO. 4,452,249 FOR THE MARK HYPERX BEAST**

11. Spansion restates and realleges its allegations in Paragraphs 1 through 10 of its Counterclaims, as if fully set forth herein and incorporates them by reference herein.

12. Opposer owns Trademark Registration No. 4,452,249 for the mark HYPERX BEAST for "dynamic random access memory (DRAM)" in Class 9.

13. Registration No. 4,452,249 should be restricted and modified to include a disclaimer of the term “hyperx” under Section 18 of the Lanham Act, 15 U.S.C. §1068, thus reflecting only the distinctive element of “beast” as non-descriptive.

WHEREFORE, Spansion respectfully requests that, if Opposer's opposition is sustained on the basis of descriptiveness or genericness, that Opposer's Registration No. 4,452,249 likewise be restricted to include a disclaimer of the term "hyperx" on the basis of descriptiveness.

Respectfully submitted,

PATTISHALL, McAULIFFE, NEWBURY,
HILLIARD & GERALDSON LLP

Date: February 12, 2015

By: Belinda J. Scrimenti/
Belinda J. Scrimenti
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Attorneys for Applicant, Spansion LLC

CERTIFICATE OF SERVICE

I, Andrew R.W. Hughes, hereby certify that a true and accurate copy of the foregoing Answer and Counterclaims to Amended Notice of Opposition was by first class mail, postage prepaid, with a courtesy copy by email, this 12th day of February 2015, on the following counsel for Opposer:

John D. McConaghy
Novak Druce Connolly Bove + Quigg LLP
North Tower Suite 2300
333 South Grand Avenue
Los Angeles, CA 90071-1504

By: /Belinda J. Scrimenti/
Belinda J. Scrimenti

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2015 HyperX Press Release

HyperX Achieves Fastest 128GB DDR4 Memory Kit

Fountain Valley, CA – May 11, 2015 – HyperX®, a division of Kingston® Technology Company, Inc., the independent world leader in memory products, today announced that it has created the world's fastest DDR4 128GB memory kit running at an astounding 3000MHz. The kit consists of eight 16GB HyperX Predator modules (16GB x 8) motherboard in an eight module, quad-channel configuration along with an MSI X99 MPOWER motherboard in an eight module, quad-channel configuration along with an Intel® Core™ i7 5820K processor.

During Computex en Taipei, HyperX will unleash a high-performance system featuring the upcoming 16GB modules powered by the recently released HyperX Predator M.2 PCIe SSD. The live demo will take place during the HyperX Roadshow Experience from June 4-7, 2015, at the ATT 4 FUN center, in Taipei. More details will be forthcoming about availability and pricing for HyperX Predator 16GB DDR4 modules and kits.

HyperX is the high-performance product division of Kingston Technology encompassing high-speed DDR4 and DDR3 memory, SSDs, USB Flash drives and gaming accessories. Targeted at gamers, overclockers and enthusiasts, HyperX is known throughout the world for quality, performance and innovation. HyperX is committed to eSports as it sponsors over 20 teams globally and is the main sponsor of Intel Extreme Masters. HyperX can be found at many shows including Brasil Game Show, China Joy, DreamHack, gamescom and PAX.

About HyperX

HyperX® is a division of Kingston Technology Company, Inc., the world's largest independent memory manufacturer. Established in 2002, HyperX is headquartered in Fountain Valley, California, USA. For more information, please call 800-337-8410 or visit www.kingston.com/hyperx

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HyperX Mouse Pads

**Skyn**

The Skyn to win

**FURY**

A surface above the rest



HyperX Skyn Mouse Pad

HyperX® has the Skyn to win with two mouse pad textures available individually or in a dual pack. Choose the control surface for increased gaming accuracy or the speed surface for fast-moving action. Both are ideal for everyone from noobs to pros and feature ultra-thin, anti-microbial material designed to keep you winning for hours. HyperX Skyn works with optical, wireless or laser mice and sticks to most surfaces for high performance at home or on the road.

Features

- Choose the Control surface for increased accuracy or the Speed surface for fast-moving action
- Paper-thin gaming-grade hard surface for a seamless transition between desktop and mouse pad
- Material designed for prolonged use with anti-microbial surface
- Compatible with optical, wireless or laser mice
- Adhesive bottom with a pull-off tab that sticks to most surfaces and is easily removable
- Two-year warranty

Specifications

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"I don't hesitate one bit giving the HyperX Skyn mouse pads our Highly Recommended award." [Read Full Review](#)

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Kingston DataTraveler HyperX 8GB USB Flash Drive

Kingston DataTraveler HyperX 8GB USB Flash Drive

Posted by **Nathan Kirsch** | Wed, Feb 13, 2008 - 12:00 AM

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Kingston DataTraveler Flash Drives Go HyperX

Back in 2002, Legit Reviews was one of the first publications to look at the Kingston HyperX memory series and it seems now in 2008 the HyperX series has expanded into USB Flash Drives. With the success of the HyperX series it would only make sense to keep the branding the same across different product series as the public now knows that the HyperX logo is reserved for the fastest products from Kingston Technology.

The Kingston DataTraveler HyperX USB Flash Drives have a read speed of 30MB/s and write speed of 20MB/sec so they certainly deserve the HyperX name as it is hands-down the fastest USB Flash drive that Kingston offers. The DataTraveler HyperX gives enthusiasts the power they want from a portable flash [storage solution](#), while enhancing the looks of the capless Flash drive to make it more appealing to enthusiasts.



The Kingston DataTraveler HyperX USB Flash drive that we are looking at today is the 8GB version, but Kingston offers the drive with different capacities at various price points, so if you want a HyperX USB Flash drive you can pick from a 2GB (\$54.99), 4GB (\$99.99) or 8GB (189.99) capacity. Kingston warranties the original end user customer of the Kingston DataTraveler HyperX for five years, so during that period you are covered when it comes to defects in material and workmanship. Of course if you experience difficulty during the installation or subsequent use of a Kingston product, you may contact Kingston's [Technical Support department](#) for free at any time. With a

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Apple Watch vs. Moto 360?

five year warranty and free [technical support](#)  you can sleep at night knowing you are covered. It should also be noted that the drive comes with a World of Warcraft internet shortcut on the drive that allows you to sign up and download a free 14 day trial for those that are interested in trying out WoW.




The DataTraveler HyperX features a capless design with a nifty looking metallic blue case and black rubber grips for easy handling that looks great. The image above shows the drive shows that in the [storage](#)  state the USB connector is hidden safely in the housing, but for use it can be extended with the slider on the side of the housing. The blue LED activity indicator can also be seen on the side just above the capacity markings. To use the Flash drive, just plug DataTraveler HyperX into an available USB port and you are on your way to transferring photos, videos, music and [data](#)  to carry with you to your second system, notebook or fellow enthusiasts system. It works with Windows 2000, Windows XP, Windows Vista, Mac OS 10 and Linux 2.6 and above. If you're running Windows Vista, then it should be noted that the Kingston DataTraveler HyperX is enhanced for Windows ReadyBoost too.



At 2.76 x 0.88 x 0.44 (70.0mm x 22.4mm x 11.3mm) the Kingston DataTraveler HyperX is not going to win awards on being small, but it is gets the job done.

Features/Specifications:

- Capacities – 2GB, 4GB, 8GB
- Dimensions – 2.76 x 0.88 x 0.44 (70.0mm x 22.4mm x 11.3mm)
- Fast – [data transfer](#)  rates of 30MB/sec. read and 20MB/sec. write
- Enhanced for Windows ReadyBoost on Vista-based systems
- Operating Temperature – 32° to 140° F (0° to 60° C)
- Storage Temperature – -4° to 185° F (-20° to 85° C)
- Simple – just plug into a USB port
- Guaranteed – five-year warranty



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If you are curious how this will work on a key chain, then fear not as it comes with everything you need! Overall, the Kingston DataTraveler is what you would expect. It features a clean capless design, fast transfer speeds and the blue HyperX branding that has been around for nearly six years now! Let's take a look at the drive performance against several other common flash drives.

Questions or Comments? [View this thread in our forums!](#)



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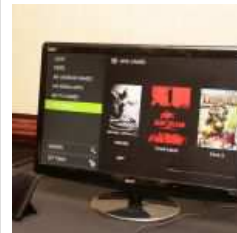
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